

16.1 CIVIL ACTIONS-SCHEDULING

- (a) **General Principles.** Unless otherwise ordered, this Local Rule is applicable to all civil actions pending in this district, except for the actions exempted by Rule 16.1(c). Counsel are responsible for completing discovery in the shortest time reasonably possible with the least expense and without the necessity of judicial intervention.

Rule 16(b), Federal Rules of Civil Procedure, requires that a scheduling order be entered in every action, except those specifically exempted, limiting the time (1) to join other parties and to amend the pleadings; (2) to file motions; and (3) to complete discovery. A scheduling order shall be entered within the time set out in Rule 16.1(b). Counsel should have the initial responsibility for suggesting reasonable dates for the scheduling order.

Upon completion of discovery, post-discovery pretrial procedures will be scheduled pursuant to Rule 39.1 and the action will be set for trial. Post-discovery pretrial procedures and the trial setting will be coordinated whenever possible.

- (b) **Scheduling Order Deadline; Method of Calculation.** A scheduling order shall be entered no later than 90 days after the appearance of a defendant or 120 days after the complaint has been served on a defendant, whichever is earlier.

The following guidelines apply to the calculation of the scheduling order deadlines:

1. The 90-day period begins to run on the date on which any defendant files any paper in the action.
2. The 120-day deadline applies if no defendant has appeared within 30 days after the complaint was first served on a defendant and begins to run on the date the complaint was first served on any defendant.

- (c) **Actions Exempt From These Procedures.** Categories of actions exempted from compliance with these procedures are specified in Rule 26(a)(1)(B), Federal Rules of Civil Procedure. Exemptions in particular cases are further subject to orders of the Court.

- (d) **Proposed Scheduling Order/Discovery Plan Required; Plaintiff's Counsel Shall Take Lead in Preparation of Proposed Scheduling Order/Discovery Plan.** The parties shall file a proposed scheduling order complying with Rule 16.1(f), together with the discovery plan required by this Rule, 14 days after the meeting required by Rule 26.1(a). The discovery plan shall be included as part of the proposed scheduling order. After the meeting required by Rule 26.1(a) of these Rules, counsel for plaintiff is responsible for preparing a draft of the

proposed scheduling order/discovery plan. The draft prepared by plaintiff's counsel shall be presented to counsel for all other parties for additions and modifications. In pro se cases not exempt under Rule 26(a)(1)(E), Federal Rules of Civil Procedure, counsel for defendant(s) shall take the lead in preparing the proposed scheduling order/discovery plan. Counsel should fully and openly communicate with each other so that a joint proposed scheduling order/discovery plan is submitted. If all counsel do not agree on a proposed scheduling order/discovery plan, separate proposed scheduling orders/discovery plans should not be filed. Disagreements concerning a proposed scheduling order/discovery plan, if unresolved by the good faith efforts of counsel, should be stated in the proposed scheduling order/discovery plan.

- (e) **Sanctions for Failing to Cooperate in Preparing a Proposed Scheduling Order/Discovery Plan.** The failure of a party or a party's counsel to participate in good faith in the framing of the proposed scheduling order/discovery plan may result in the imposition of appropriate sanctions. *See* Rules 16(f) and 37(g), Federal Rules of Civil Procedure.
- (f) **Content of the Proposed Scheduling Order.** The proposed scheduling order referred to in Rule 16.1(d)) shall:
 - 1. Propose a date limiting joinder of parties;
 - 2. Propose a date limiting the filing of motions to amend the pleadings (It is suggested that counsel consider in most actions a date approximately 180 days after the filing of the complaint.);
 - 3. Propose a date limiting the filing of motions [It is suggested that counsel in most actions consider proposing that (a) all discovery motions be filed on or before the date proposed for the completion of discovery; and (b) subject to the provisions of Rule 12(h)(2), Federal Rules of Civil Procedure, all dispositive motions be filed within 30 days after the date proposed for the completion of discovery.];
 - 4. Propose a discovery plan for the completion of all discovery, as required by 16.1(d) of these Rules, including the date by which all discovery shall be completed. Counsel should not propose a date for the completion of discovery which is known to be without any reasonable basis. *See* Rules 26.1(c) and 26.1(d); and
 - 5. Estimate the number of days necessary to try the action with reasons supporting the estimate.
 - 6. Suggest an agreeable trial date for the court's consideration.

7. State whether any party anticipates requesting a protective order. In the meeting required by Rule 26(f), Federal Rules of Civil Procedure, the parties shall discuss specific areas of written discovery and deposition testimony which may be the subject of a request for protective order. Any party which anticipates requesting a protective order shall serve on every other party a proposed protective order and a proposed stipulation for its entry no later than the date of serving initial disclosures required in Rule 26(a)(1), Federal Rules of Civil Procedure. Any party seeking a protective order without first having followed the requirements of this Local Rule shall state the cause within any motion for protective order later filed with the Court.

8. State whether any party requests the entry of a Fed. R. Evid. 502(d) Court Order.

26.1 DISCOVERY

- (a) **Meeting of the Parties; Initial Disclosures.** The meeting of the parties required by Rule 26(f), Federal Rules of Civil Procedure, should take place as soon as practicable, but not fewer than 30 days before the Court's scheduling order is to be entered under Rule 16.1(b) of these Rules. The initial disclosures required under Rule 26(a)(1), Federal Rules of Civil Procedure should be made at this meeting, but must be made no later than 14 days after the meeting. Counsel who fail to investigate their actions and who fail to make initial disclosures as provided by these Rules may be subject themselves to sanctions.
- (b) **Discovery Shall Commence After Meeting of the Parties; Filing of Motions Does Not Automatically Stay Discovery or Disclosure Requirements.**
 1. Parties required to meet and confer may not seek discovery from any source before such meeting, except by agreement or by order of the Court.
 2. Absent an order of the Court to the contrary, the filing of a motion, including a discovery motion, a motion for summary judgment, or a motion to dismiss, does not excuse counsel from complying with this Rule, with any disclosure requirement under this Rule or the Federal Rules of Civil Procedure, or with any scheduling order entered in the action.
- (c) **Content of Discovery Plan.** The discovery plan required by Rule 16.1(d) shall:
 1. Propose a date by which all discovery will be completed, and state the facts, such as the complexity of the issues, which counsel considered in arriving at the proposed deadline for the completion of all discovery;

2. State the subjects on which discovery may be needed, the status of all discovery to date, a description of all discovery each party intends to initiate prior to the close of discovery, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;
3. State the date by which the initial disclosures required by Rule 26(a)(1), Federal Rules of Civil Procedure, were made or will be made, and propose what changes, if any, should be made in the timing, form, or requirement for disclosures under Rule 26(a), Federal Rules of Civil Procedure, these Rules, or a standing order. *See* Rule 26(f)(1), Federal Rules of Civil Procedure.
4. Propose, if necessary, any additional limitations on discovery that should be imposed, or any changes to the limitations on discovery imposed by these Rules or the Federal Rules of Civil Procedure. *See* Rule 26(f)(3), Federal Rules of Civil Procedure.
5. Propose, if necessary, any other orders that should be entered by the Court. *See* Rule 26(f)(4), Federal Rules of Civil Procedure.

The information furnished pursuant to subsections 1, 2, and 3 should be sufficiently detailed to inform the Court why the period of time proposed for completing discovery is believed necessary. The specificity of the information furnished pursuant to subsections 1 and 2 shall increase in direct relation to the extent to which the deadline for completion of discovery exceeds 180 days after a defendant has been served. In other words, the longer the time proposed for discovery, the greater detail counsel shall furnish in support of the request. Consideration should be given to proposing dates prior to the close of discovery for the completion of specific phases of discovery. Counsel should keep in mind the general principles governing discovery set forth in the Federal Rules of Civil Procedure and Rule 16.1(a).

- (d) **Preliminary Discovery Plan.** The Court recognizes that in some actions it may be impossible for the parties to file a realistic discovery plan when it is due under Rule 16.1(d). If the parties believe that it is impossible to propose a date for the completion of discovery which has a reasonable basis, the parties should file a preliminary discovery plan which conforms to Rule 26.1(c). Date for completion of all discovery should be suggested and a date should be proposed by which a plan will be filed fully complying with Rule 26.1(c).

Counsel proposing a preliminary discovery plan shall explain in detail why a deadline for completion of all discovery cannot be proposed. Only in extraordinary situations and upon a showing of good cause will a preliminary plan be accepted.

Comment [A1]: This reference to Fed. R. Civ. P. 26(f)(3) incorporates and includes "any issues about claims of privilege or of protection as trial-preparation materials, including – if the parties agree on a procedure to assert these claims after production – whether to ask the court to include their agreement in an order under Federal Rule of Evidence 502." *See* Fed. R. Civ. P. 26(f)(3)(D) (2016).

Note – the proposed changes to the Local Rules that are currently under revision still include this reference to Fed. R. Civ. P. 26(f)(3). As proposed, L.R. 26.1(c) states, "Specifically, the discovery plan must: ... 1. Conform with Fed. R. Civ. P. 26(f)(3)."

- (e) **Discovery Conference.** If requested prior to or at the time a proposed scheduling order is filed, or if ordered by the Court on its own motion after reviewing a proposed scheduling order, a discovery conference pursuant to Rule 16(a), Federal Rules of Civil Procedure, will be held before entering a scheduling order.
- (f) **Limits on Stipulations.** Parties may not eliminate by stipulation any of the disclosures required by Rule 26, Federal Rules of Civil Procedure, this rule, or any General Order of this Court. Parties who want to eliminate a particular disclosure requirement shall file a joint written motion setting forth the proposed change and showing good cause for such change.